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10/596,259	09/20/2006	Laurie Scanlin	2076.09.PRC	4568

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SMITH HOPEN, PA
180 PINE AVENUE NORTH
OLDSMAR, FL 34677

EXAMINER	
TSAY, MARSHA M	
ART UNIT	**PAPER NUMBER**
1656	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/596,259	SCANLIN ET AL.	
	Examiner	Art Unit	
	Marsha M. Tsay	1656	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 November 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8 and 20-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *26,29-31 and 33* is/are rejected.

7)☒ Claim(s) *1-8,20-25 and 28* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *11/13/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

This Office action is in response to Applicants' remarks received November 11, 2008.

Applicants' arguments have been fully considered and are deemed to be persuasive to overcome some of the rejections previously applied. Rejections and/or objections not reiterated from previous Office actions are hereby withdrawn.

Claims 9-19 are canceled. Claims 1-8, 20-35 are pending and currently under examination.

Priority: The request for priority to provisional application 60/530219, filed February 16, 2003, is acknowledged.

Objections and Rejections

Claims 1-8, 20-35 are objected to because of the following informalities: claims 1-5 have been amended to recite a "quinoa fruit"; however the rest of the claims 20-35 recite "quinoa grain". The specification appears to disclose that quinoa grain and quinoa fruit are equivalent (p. 1). However, Applicants are asked to recite either "grain" or "fruit" throughout the claims for consistency since it may appear as if "quinoa fruit" and "quinoa grain" are two different products and/or inventions. Appropriate correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 27, 31-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 27, 31-32 recite "starch/fiber product". It is unclear what is meant by "starch/fiber", (i.e. is the starch equivalent to the fiber or does the symbol "/" mean "and/or". Further clarification is requested.

Claim 27, line 2, recites the separated fiber. It is unclear if "the separated fiber" is the same as the "insoluble fiber" recited in claim 26(e). Further clarification is requested.

Claims 33-35 are included in this rejection because they are dependent on claim 31 and fail to cure the defect.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 26, 29-31, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garrison (US 4175075; previously cited) in view of Horisberger et al. (4072666; previously cited). Garrison et al. disclose methods of processing vegetable seeds to isolate a protein isolate or concentrate comprising comminuting vegetable seeds to form flakes and then treating said flakes with a solvent to extract oil and leaving deflated flakes (col. 1 lines 32-38). Alkaline solutions are traditionally used to solubilize and extract protein (col. 1 lines 44-46). The solubilized protein can then be removed from the insoluble seed materials and precipitated by

various means, i.e. isoelectric precipitation and filtration (col. 1 lines 46-50). Garrison et al. do not teach quinoa.

Horisberger et al. disclose quinoa is a vegetable seed from which proteins can be isolated from.

It would have been obvious to one of ordinary skill to modify the method of Horisberger et al. by substituting the quinoa of Horisberger et al. for the vegetable seed of Horisberger in order to obtain a protein concentrate containing at least about 50 weight % protein (26, 30-31, 33). While Horisberger et al. do not disclose all the elements recited in claims 26(a) to 26(f) and 31(a) to 31(f), it would be reasonable for one of ordinary skill to recognize that since Horisberger et al. disclose the essential steps necessarily to process and isolate protein from a vegetable grain, i.e. comminuting the seed, extracting the oil, extracting the protein from the defatted seed in alkaline solution, one of ordinary skill would know to separate the extracted protein from the rest of the seed material and dry said extracted protein in order to obtain a protein concentrate that should have about a 50 weight % protein. The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages. See Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382.

Regarding claims 26(c), 33, the step of comminuting the defatted quinoa, while Horisberger et al. do not specifically disclose comminuting the defatted quinoa flakes; Horisberger et al. do disclose that grinding or comminuting frees as many of the protein granules as possible from the cellular structure of the seed (col. 6 lines 11-17). Therefore, it would be

reasonable for one of ordinary skill to further include a grinding step after the defatting step in order to obtain a protein product with the highest weight percent of protein possible.

Regarding claims 29, 31(e), the step of neutralizing the separated fiber, whereby a quinoa starch/fiber product is obtained, while Horisberger et al. do not specifically disclose a neutralization step; Horisberger et al. do disclose that there is a middle layer in the comminuted quinoa solution that contains water-soluble salts and sugars present in the vegetable seed material (col. 8 lines 20-23) discloses an optional step of extracting the non-proteinaceous components principally extraneous carbohydrates (col. 8 lines 40-55). Therefore, it would be reasonable for one of ordinary skill to recognize that the additional step of extracting and/or concentrating step can be included to obtain an extraneous carbohydrate product.

Claim 28 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-8, 20-25 appear to be allowable except for the objections as noted above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marsha M. Tsay whose telephone number is (571)272-2938. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Maryam Monshipouri/

Primary Examiner, Art Unit 1656

January 28, 2009